

SO ORDERED.

SIGNED this 15th day of June, 2020.



  
LENA MANSORI JAMES  
UNITED STATES BANKRUPTCY JUDGE

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**UNITED STATES BANKRUPTCY COURT  
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA  
WINSTON-SALEM DIVISION**

IN RE:	)	
	)	Chapter 13
	)	
Hazel C. Wright,	)	Case No. 19-51333
	)	
Debtor.	)	
	)	
	)	
	)	

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**ORDER**

**SUSTAINING TRUSTEE’S OBJECTION TO DEBTOR’S CLAIM FOR PROPERTY EXEMPTIONS**

THIS MATTER came before the Court on the objection of the chapter 13 trustee (the “Trustee”) to the Debtor’s Claim for Property Exemptions (Docket No. 1, Local Form 91C). Based upon the record in this bankruptcy case, the testimony provided by the Debtor, and for the reasons discussed below, the Court sustains the Trustee’s objection to the Debtor’s exemption claim.

The Debtor filed this chapter 13 bankruptcy case on December 20, 2019. Among the assets listed in Debtor’s Schedule A/B are interests in two pieces of real property. One of these properties is the Debtor’s residence at 271 S. Old Raleigh Road, Thomasville, NC (the “Residence”), which the Debtor values at \$117,210. The second scheduled property is 265 S. Old Raleigh Road, Thomasville, NC, which is a lot adjacent to the Residence (the “Adjacent Lot”). The Debtor described the Property as a “[v]acant lot” and valued it at \$15,730. The Residence is encumbered by a mortgage held by DRI Mortgage Opportunity Fund LP with a balance of \$103,940.82 (Claim No. 4-1). Both the Residence and the Adjacent Lot are encumbered by a secured tax lien of the Davidson County Tax Collector in the amount of \$1,554.59 (Claim No. 5-1).

In Section 1 of Local Form 91C, which affords a debtor the opportunity to claim an exemption in real or personal property used by the debtor as a residence, the Debtor claimed the net value of both the Residence and the Adjacent Lot. On March 11, 2020, the Trustee filed an objection to the Debtor's claim for a residential property exemption in the Adjacent Lot and requested it be denied (Docket No. 15). On March 25, 2020, the Debtor filed a response to the Trustee's objection (Docket No. 18), arguing that, while the Adjacent Lot was purchased separately and several years after the Debtor acquired the Residence, the Debtor and her late husband have utilized both parcels as a single homestead. In support of this contention, the Debtor points to her use of the property for family gatherings, gardening, and as a play area for her grandson.

The Court held a video conference hearing on June 9, 2020,<sup>1</sup> at which Christopher Avery appeared on behalf of the Debtor and Vernon J. Cahoon appeared on behalf of the Trustee. The Debtor also appeared and testified as to her use of the Residence and Adjacent Lot. The Court makes the following pertinent findings based upon the Debtor's testimony:

1. The Debtor purchased the Residence and Adjacent Lot, and continues to hold those parcels, through two separate deeds.
2. The Debtor acquired the deed to the Residence in 1972, but due to ongoing construction, did not move into the single-family home at the Residence until approximately 1982.
3. The Debtor purchased the Adjacent Lot in 1986, approximately four years after the Debtor and her late husband moved into the Residence.
4. The Debtor did not need the Adjacent Lot in order to live in the Residence.
5. There are no buildings, garages, or other structures on the Adjacent Lot.
6. The Debtor's driveway to the Residence connects directly to Old S. Raleigh Road and does not cross into the Adjacent Lot at any point.
7. The Debtor's electric, gas, and water lines run directly from Old S. Raleigh Road to the Residence and do not cross into the Adjacent Lot at any point.
8. There are no utility easements running across the Adjacent Lot.
9. The Debtor receives separate tax bills from Davidson County for the Residence and the Adjacent Lot.
10. The Debtor had a single pear tree on the Adjacent Lot she used to gather fruit, but the tree was inadvertently cut down by a third party in 2019.
11. The Debtor has a vegetable garden on the Adjacent Lot that is approximately 10 feet by 12 feet in size.
12. The Debtor hosts family gatherings on the Adjacent Lot on an annual basis.

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<sup>1</sup> Due to the COVID-19 outbreak, the Bankruptcy Court for the Middle District of North Carolina issued a standing order that all bankruptcy hearings are to be conducted telephonically. *See* Amended Standing Order re Court Operations Under the Exigent Circumstances Created by COVID-19 (effective Mar. 26, 2020).

13. The Debtor uses the Adjacent Lot for entertaining her 5-year old grandson, including as space for a temporary plastic swimming pool she stores in her basement.

Pursuant to North Carolina law, a resident of North Carolina who is a debtor is entitled to exempt his or her “aggregate interest, not to exceed thirty-five thousand dollars (\$35,000) in value, in real property or personal property that the debtor or a dependent of the debtor *uses as a residence*.” N.C. Gen. Stat. § 1C-1601(a)(1) (emphasis added). In North Carolina, “exemption laws are to be liberally construed in favor of the debtor and allowance of the exemption.” *In re Parker*, 610 B.R. 535, 537 (Bankr. E.D.N.C. 2019). Despite the Court’s obligation to liberally construe the interpretation of residence under N.C. Gen. Stat. § 1C-1601(a)(1), a debtor’s residence does not necessarily “include all land that the debtors own and use adjacent to their own.” *Lanier v. Beaman*, 394 B.R. 382, 384 (E.D.N.C. 2008). “In determining whether a particular piece of property is properly exempted, the Court looks to the use of the property as of the date of the filing of the petition.” *In re Rogers*, No. 16-02884, 2016 WL 5794707, at \*3 (Bankr. E.D.N.C. Oct. 3, 2016). Not every potential use of an adjoining lot is sufficient to justify exemption under N.C. Gen. Stat. § 1C-1601(a)(1). Instead, a debtor must demonstrate through their use of the adjacent lot that the property is necessary for the support, existence, or enhancement of the debtor’s residence. *See, e.g., In re Stox*, No. 10-08123, 2011 WL 5902882, at \*4 (Bankr. E.D.N.C. May 27, 2011) (finding three adjoining parcels “are linked to the support, existence, or enhancement of the residential property”); *In re Kincade*, No. 10-02462, 2010 WL 3745901, at \*2 (Bankr. E.D.N.C. Sept. 20, 2010) (finding adjoining acreage to be “used for the support, existence, and enhancement” of the debtor’s residential property); *In re Lanier*, No. 07-04448, 2008 WL 1806117, at \*2 (Bankr. E.D.N.C. Apr. 18, 2008) (finding the use of an adjoining lot “is not linked the support, existence, or enhancement of the structure in which the debtors live”). The Court thus looks to the Debtor’s use of the Adjacent Lot as of the petition date to determine whether it is necessary for the support, existence, or enhancement of the Residence, thereby allowing the Debtor to exempt both parcels under North Carolina law.

In support of her right to exempt the Adjacent Lot, the Debtor relies chiefly on the following categories of property use: (1) the collection of fruit and garden produce and (2) hosting family gatherings and entertaining her grandson (Docket No. 18). Although the Debtor undoubtedly utilizes the Adjacent Lot in some capacity, the uses cited by the Debtor fail to show

the Adjacent Lot is necessary for the “support, existence, or enhancement” of the Debtor’s Residence. *In re Stox*, 2011 WL 5902882, at \*4.

While the presence of gardens and fruit trees have been cited by courts as factors favoring an exemption claim, the resources described in those decisions greatly outproduced the Debtor’s vegetable garden and single pear tree and were more directly tied to the support of the residence. In *Stox*, the debtor’s adjoining lots contained a vegetable garden which produced “enough vegetables each year to feed her and her family.” *Id.* at \*2. The adjoining land in *Stox* also contained a “fruit tree orchard,” from which the debtor and her family consumed and preserved fruits, as well as grapevines, which the debtor used for twenty years to produce jellies and jams. *Id.* In *Johnson*, the court found the debtors’ use of an adjacent lot for gardening and to maintain chickens and bees was insufficient on its own to allow the debtors to claim an exemption in the parcel. *In re Johnson*, No. 11-50326, 2011 WL 2971050, at \*1 (Bankr. M.D.N.C. July 12, 2011). By comparison, the evidence indicates the Debtor’s vegetable garden is more recreational in purpose than an important source of food for the Debtor or her family, nor is there any evidence of chicken coops, grapevines, beehives, or other resources that support the Residence. Unlike the fruit tree *orchard* in *Stox*, the Debtor here points only to a single pear tree, which was cut down and is no longer producing any fruit on the Adjacent Lot. When viewed against comparable cases, the mere presence of a vegetable garden and the prepetition existence of a single fruit tree does not strongly support the claim for an exemption in the Adjacent Lot.

Likewise, the Debtor’s use of the Adjacent Lot for recreational purposes does not compare favorably to those decisions in which that factor supported a claimed exemption. While the Debtor testified to her use of the Adjacent Lot for hosting annual family gatherings and entertaining her grandson, there are no permanent indicia of recreational use to be found. This contrasts sharply with decisions in which courts found the presence of fishing ponds, above-ground swimming pools, picnic tables, and playhouses favored an exemption claim. *See, e.g., In re Regenhardt*, No. 17-01225, 2017 WL 3701217, at \*2 (Bankr. E.D.N.C. Aug. 24, 2017); *In re Kincade*, 2010 WL 3745901, at \*2. Here, there is no picnic table, sports court, playhouse, pond, fence or other clear demonstration of how the Adjacent Lot’s recreational value supports or enhances the Residence. While the Debtor uses the Adjacent Lot to set up a swimming pool for her grandson, her testimony indicates the pool in question is a temporary, plastic swimming pool, rather than a permanent year-round feature of the Adjacent Lot. As with the garden and fruit tree,

the cited recreational use of the Adjacent Lot does not strongly support the claim for an exemption in the parcel.

Moreover, the weightiest factors courts look to in determining the appropriateness of an exemption claim are not present in the Adjacent Lot. There are no garages, storage sheds, barns, or other structures on the Adjacent Lot which support the Residence. *Compare In re Kincade*, 2010 WL 3745901, at \*2 (finding support for debtor's exemption in the hog barn housed on the adjacent parcel) *with In re Lanier*, 2008 WL 1806117, at \*2 (denying exemption for empty pastureland devoid of any structures). Significantly, there is no segment of the driveway, nor any utility line or easement, which crosses through the Adjacent Lot. *Compare In re Stox*, 2011 WL 5902882, at \*1 (finding support for exemption in the driveway that runs through and connects all three parcels) *and In re Regenhardt*, 2017 WL 3701217, at \*2 (allowing exemption where a portion of the driveway runs through the adjacent lot) *with In re Lanier*, 2008 WL 1806117, at \*2 (denying exemption after finding the absence of any driveway, well, septic or easement) *and In re Johnson*, 2011 WL 2971050, at \*1 (finding same). The Debtor also purchased the Adjacent Lot separately, and at a later date than the Residence, and receives two separate tax bills for the parcels, factors which further favor a finding against the Debtor's exemption claim in the Adjacent Lot. *See In re Johnson*, 2011 WL 2971050, at \*2; *In re Lanier*, 2008 WL 1806117, at \*1; *cf. In re Kincade*, 2010 WL 3745901, at \*2. These salient factors described above all militate against allowing the Debtor's claim for a property exemption in the Adjacent Lot.

Based upon the foregoing, THE COURT FINDS the Debtor has failed to demonstrate she is entitled to claim an exemption in the Adjacent Lot under N.C. Gen. Stat. § 1C-1601(a)(1).

Accordingly, IT IS HEREBY ORDERED that the Trustee's objection is sustained and the Debtor's homestead exemption is denied.

IT IS FURTHER ORDERED that the Debtor is allowed thirty (30) days from the entry of this order to file an amended schedule of exemptions, upon which the Trustee shall have thirty (30) days to object to the exemptions claimed, pursuant to Federal Rule of Bankruptcy Procedure 4003(b)(1).

**END OF DOCUMENT**

PARTIES TO BE SERVED

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19-51333 C-13

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